

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.1 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

The State of Bihar

.... Petitioner

Versus

Shamshe Alam @ Md. Shamse Alam, S/o Late Sk. Serajul Haque, R/o village +
Jokatia, P.S.- Majholia, Distt.- West Champaran

.... Respondent

With

Criminal Appeal (DB) No. 540 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

Kumud Kumar @ Kumod Kumar, son of Sri Anirudh Singh, resident of Village-
Soniam, P.S. Dulhin Bazar, District- Patna, proprietor of C.D. Shop, Sammelan
Market, Ashiana Road, Patna, presently residing at Flat No. 145, Type-III, Central
Revenue Colony, P.S. Shastri Nagar, District- Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 595 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

1. Rakesh Kumar Mishra, Son of Sri Ram Badan Mishra, resident of Raja Bazar
Sheikhpura Bagicha, P.S.- Shastrinagar, District- Patna

2. Rajiv Kumar Ranjan @ Sonu, Son of Sri Raj Nandan Prasad Verma @ Raj Nandan Prasad, resident of village- Safepur, P.S.- Kako, District- Jehanabad



.... Appellants

Versus

The State of Bihar through C.B.I.

.... Respondent

With

Criminal Appeal (DB) No. 612 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

Soni Kumar @ Soni Rajak, Son of Sri Narendra Kumar, Resident of village- Lodhipur, Goleghar, P.S.- Gandhi Maidan, Patna, District- Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 628 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

Anil Kumar, son of Late Ramakant Singh, resident of village - Teppa, Police Station - Tekari, District - Gaya

.... Appellant

Versus

The State of Bihar through CBI

.... Respondent

With

Criminal Appeal (DB) No. 650 of 2014

Arising Out of PS. Case No. -5 Year- 2003 Thana -C.B.I CASE District- PATNA

Shamshe Alam @ Md. Shamse Alam, S/o Late Sk. Serajul Haque, R/o village -
Jokatia, P.S.- Majholia, Distt.- West Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 680 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

Arun Kumar Singh, Son of late Keshav Narain Singh, Resident of Village- Harka
Kalyan, P.S.- Meenapur, District- Muzaffarpur.

.... Appellant

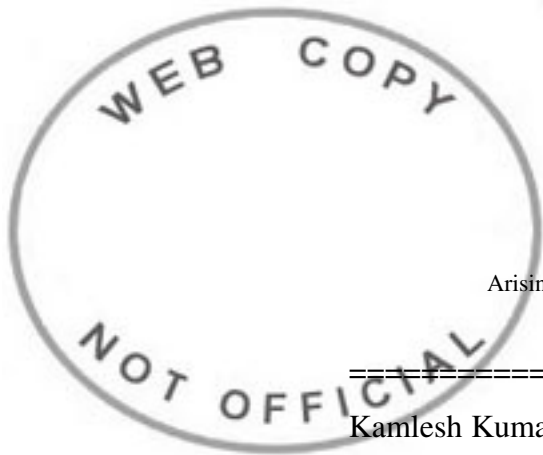
Versus

The State of Bihar through C.B.I.

.... Respondent

With





Criminal Appeal (DB) No. 652 of 2014

Arising out of PS.Case No. -868 Year- 2002 Thana –GARDANIBAGH (SHASTRINAGAR)
District- PATNA

Kamlesh Kumar Gautam, son of Late Ramashray Prasad Singh, resident of village -
Amarpur, Police Station - Makhdumpur, District - Jehanabad.

.... Appellant

Versus

The State of Bihar through CBI.

.... Respondent

Appearance :

- | | | |
|--------------------|---|--|
| For the Appellants | : | Mr. Surendra Singh, Senior Advocate.
Mr. Kanhaiya Prasad Singh, Senior Advocate.
Mr. Akhileshwar Prasad Singh, Senior Advocate.
Mr. Ajay Kumar Thakur, Advocate.
Mr. Ram Sevak Chaudhary, Advocate.
Mr. Prabhu Narayan Sharma
Mr. Anil Singh, Advocate.
Mr. Shiva Shankar Prasad Singh, Advocate.
Mr. Surya Prakash Singh, Advocate.
Mr. Pushpendra Priyadarshi, Advocate.
Mr. Amrit Anunay, Advocate.
Mr. Jitendra Prasad Shaha, Advocate.
Mr. Hans Raj, Advocate.
Mr. Ravi Ranjan, Advocate.
Mr. Anjani Kumar Jha, Advocate. |
| For the C.B.I. | : | Mr. Bipin Kumar Sinha, Advocate. SC, CBI
Mr. Subhash Chandra Mishra, Advocate.
Mr. Sunil Kumar Ravi, Advocate.
Mr. Shashi Shekhar Kumar Prasad, Advocate. |
| For the Informant | : | Mr. Chitranjan Sinha, Senior Advocate.
Mr. Ravi Bhardwaj, Advocate. |

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

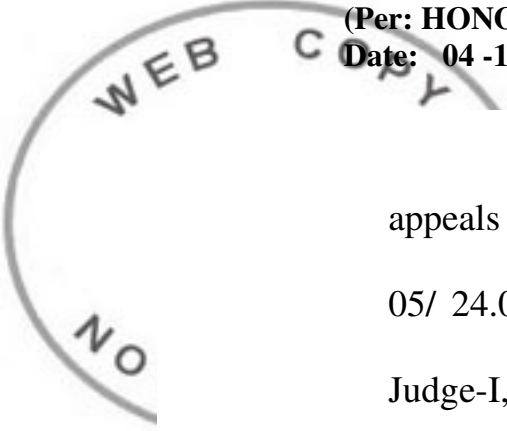
and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: **HONOURABLE MR. JUSTICE V.N. SINHA**)

Date: 04 -11-2015



Instant death reference and the seven analogous appeals arise out of judgment of conviction, order of sentence dated 05/ 24.06.2014, passed by Ad hoc Additional District and Sessions Judge-I, Patna, in Sessions Trial No. 523/04 & S.T. No. 918/04, arising out of Gardanibagh (Shastri Nagar) P.S. Case No. 868/02 dated 29.12.2002, which was transferred to C.B.I. whereafter the case was renumbered as R.C No.5(S) of 2003 whereunder Accused No. 1 Shamshey Alam appellant in Criminal Appeal (DB) No. 650 of 2014 has been convicted for the offences under Sections 302, 148, 342 and 201 of the Penal Code and Section 27 of the Arms Act, sentenced to suffer capital punishment, Rigorous Imprisonment for 3, 1, 7 years with further direction to pay fine of Rs. 10,000/- each to the family of the three deceased under Sections 302, 148, 342, 201 of the Penal Code respectively, in default of payment of fine to further undergo rigorous imprisonment for three months. The sentences have been directed to run concurrently. No separate sentence, however, has been awarded under Section 27 of the Arms Act.

Accused No.2 Arun Kumar Singh, appellant in Criminal Appeal (DB) No. 680 of 2014 has been convicted for the



offences under Sections 148, 342, 302/149 and 201 of the Penal Code, sentenced to suffer Rigorous Imprisonment for life till death as also to pay fine of Rs. 10,000/- each to the family of the three deceased under Section 302/149 of the Penal Code, in default of payment of fine to further undergo Rigorous Imprisonment for three months. He has further been sentenced to suffer Rigorous Imprisonment for 3, 1 and 3 years with fine of Rs. 10,000/- each to family of the three deceased, in default of payment of fine to suffer Rigorous Imprisonment for three months for the offence under Sections 148, 342 and 201 of the Penal Code respectively. His sentences are also directed to run concurrently.

Accused Nos. 3 to 8, appellant in Criminal Appeal (DB) Nos. 652, 595, 612, 540, 628 all of 2014 have been convicted for the offences under Sections 147, 342, 307/149 and 201 of the Penal Code, sentenced to suffer imprisonment for life till death as also to pay fine of Rs. 10,000/- each to family of the three deceased, in default of payment of fine to suffer Rigorous Imprisonment for three months for the offence under Section 307/149 of the Penal Code. They have further been sentenced to suffer Rigorous Imprisonment for two, three year with direction to pay fine of Rs. 5,000/- each to family of the three deceased, in default of payment of fine to suffer Rigorous Imprisonment for three months,

Rigorous Imprisonment for one year for the offences under Sections 147, 201 and 342 of the Penal Code respectively. Sentences imposed on Accused Nos. 3 to 8 have, however, been directed to run concurrently.

2. Prosecution case, as set out in the written report of Mukesh Ranjan (P.W. 1) proprietor of Manbhawan Sweets, Ashiyana Road, Patna-14 dated 29.12.2002, addressed to Superintendent of Police, Patna, on the basis of which aforesaid Gardanibagh (Shastri Nagar) P.S. Case No. 868/02 dated 29.12.2002 was registered, is that yesterday i.e. 28.12.2002 his brother Vikash Ranjan got ready around 4:00 P.M. for going to Ara, went with friend Prashant to park his scooter at the residence of Prashant. Both were also accompanied by their friend Himanshu. The three went to the STD booth of Kamlesh Kumar Gautam (Accused No.3) to telephonically call their another friend, protest was raised on the issue of false bill being raised by the booth owner leading to quarrel between them and booth owner. STD booth owner Gautam with the assistance of the owner of Sammelan Market assaulted the three, the market owner also made the three captive inside the market by locking the grill. Afterwards owner of the hardware shop with the assistance of the owner of Sammelan Market also gave the three good thrashing and telephonically called both Digha, Shastri Nagar police



with force. Police force from the two Police Stations came to the market, asked the market people to assault the three as much as they desired assuring the market people that they shall take care of the consequences. After the shop-keepers of the market left, the three police personnel shot them from close range. In the written report informant further stated that his brother and his friends were simple, law abiding individual, they had no criminal antecedent. In the report it is also stated that at the time of occurrence many persons were present, they shall record their statement at the appropriate time. In the last paragraph of the report informant requested the addressee Superintendent of Police, Patna to take action against the policemen involved in the incident including the person from whose service revolver his brother and his friends have been shot after dismissing him from service, arresting them in connection with the murder of his brother and his two friends. Written report of Mukesh Ranjan (Exhibit-1), though addressed to the Superintendent of Police, Patna, appears to have been received by Sub-Inspector of Police, Shastri Nagar Police Station who forwarded the same on the same day to the Officer-in-Charge, Gardanibagh for registering a case under Section 302/34 of the Penal Code and 27 of the Arms Act with further endorsement that S.I. G. Ram will investigate the case. Forwarding of Sub-Inspector, Shastri Nagar Police Station is marked Exhibit-14. In



the light of the aforesaid written report A.S.I. Kaushleshwar Prasad Singh registered Gardanibagh (Shastri Nagar) P.S. Case No. 868/02 dated 29.12.2002 for the offences under Sections 302/34, 307, 342, 323, 341 of the Penal Code and 27 of the Arms Act, sent the First Information Report for perusal by the Court, but Column No. 15 of the First Information Report is kept blank, as such, it is difficult to ascertain the date on which the First Information Report was forwarded for perusal by the Court. From perusal of the 1st page of the First Information Report it, however, appears that the same was perused by the Chief Judicial Magistrate, Patna on 30.12.2002. From the record, it also appears that on 30.12.2002 Incharge Chief Judicial Magistrate, Patna also received the First Information Report of Gardanibagh (Shastri Nagar) P.S. Case No. 867/02 dated 28.12.2002 registered by A.S.I. B. Tiwary for the offence under Section 304 of the Penal Code on the basis of the written report of M. Shamshey Alam (Accused No.1) dated 28.12.2002 addressed to Chief Judicial Magistrate, Sadar Court, Patna. Perusal of the written report of Accused No.1 indicates that thereunder he has reported his version of the same occurrence about which Mukesh Ranjan (P.W. 1) submitted his written report dated 29.12.2002 (Exhibit-1) and the circumstances in which Accused No.1 had to resort to firing injuring the three deceased, who were subsequently assaulted by the irate, violent mob



of 1000 unknown present outside Sammelan Market and requested that the 1000 unknown be charged for the offence under Section 304 of the Penal Code. Written report of Accused No.1 dated 28.12.2002 (Exhibit-1/1) was also received in Shastri Nagar Police Station, forwarded to Gardanibagh Police Station for instituting a case under Section 304 of the Penal Code on the basis of which A.S.I. B. Tiwary of Gardanibagh Police Station registered the formal First Information Report of Gardanibagh (Shastri Nagar) P.S. Case No. 867/02. Perusal of Column No. 13 of the said First Information Report indicates that S.I. N. Prasad will investigate the case. Perusal of Column No. 15 of the said First Information Report, however, does not indicate the date, time on which the said First Information Report was transmitted to Court for perusal, but from the 1st page of the said First Information Report it appears that the same was received, perused by the Incharge Chief Judicial Magistrate, Patna on 30.12.2002. Records further reveal that on 30.12.2002 Incharge Chief Judicial Magistrate, Patna also received First Information Report of Gardanibagh (Shastri Nagar) P.S. Case No. 866/02 dated 28.12.2002 registered for the offences under Sections 395/412, 307 of the Penal Code and Sections 25(1-b), a/26/27/35 of the Arms Act on the basis of the written report of Kamlesh Kumar Gautam (Accused No.3) addressed to Officer-in-Charge of Shastri Nagar Police Station (marked 'X' for identification)



whereunder Accused No.3, who is the owner of Gautam STD booth in Sammelan Market, had given his version of the same occurrence for which the aforesaid two First Information Report(s) of Gardanibagh (Shastri Nagar) P.S. Case Nos. 868/02, 867/02 were registered. Perusal of written report of Accused No.3 (Exhibit-X) indicates that on 28.12.2002 at about 12.30 P.M. the three deceased had come to his STD booth, there was hot exchange of words over the bill, matter was pacified, the three deceased left the booth, again all of a sudden returned to the booth around 4:15 P.M. with 9-10 young miscreants, resorted to loot of cash, coupon and mobile phone etc. In the meantime, local people and the shopkeepers of the market assembled, three amongst the miscreants plucking the wire of billing machine were apprehended, the others managed to escape resorting to firing terrorising those who assembled there. In the meantime on information being transmitted Officer-in-Charge Shastri Nagar Police Station along with other police personnel arrived. The three miscreants who could not escape were encircled by the police and local public, asked to surrender then the miscreants resorted to firing. In return fire by policemen the three miscreants received bullet injuries and fell down on the ground. The members of the public also brutally assaulted the three injured in spite of effort by police personnel to rescue the injured as a result of which the three died at



the spot. In the report Accused No. 3 also stated that the police seized two country-made pistols with fired empties in barrel, five live cartridges, few fired cartridges, three mobile phones, Rs. 1500/- in cash and coin, coupon of mobile phone (articles looted by them) from near the three bodies as also a T.V.S. motorcycle and Bajaj Super Scooter used by the miscreants. Accused No.3 submitted his written report to the then Officer-in-Charge, Shastri Nagar Police Station (Accused No.1) at Sammelan Market itself who having returned to the Police Station forwarded the report of Accused No.3 to Gardanibagh Police Station for instituting a case under Sections 395/ 412/ 307 of the Penal Code and Sections 25(1-b) 1/26/27/35 of the Arms Act with further endorsement that S.I. Ezajul Haque will investigate the case. In the light of the written report of Accused No.3 Gardanibagh (Shastri Nagar) P.S. Case No. 866/02 was registered on 28.12.2002 at 23.45 hours (11.45 P.M.) against 3+7 unknown accused persons by A.S.I. B. Tiwary of Gardanibagh Police Station. From the records, it also appears that in the light of the written report of Accused No. 3 (Exhibit-X) investigation of the case had already begun at the place of occurrence itself, as inquest proceedings over the three dead bodies were conducted at the place of occurrence i.e. Sammelan Market on 28.12.2002 at 17.30 hours (05.30 P.M.), 17.45 hours (05.45 P.M.), 17.55 hours (05.55 P.M.), Exhibits- 15, 15/1, 15/2 respectively.



Seizure of the incriminating articles recovered from the place of occurrence were made vide seizure-list prepared by Accused No. 1 on 28.12.2002 at 18.10 hours (06.10 P.M.), 18.25 hours (06.25 P.M.), 18.35 hours (06.35 P.M.) and 18.40 hours (06.40 P.M.), Exhibits 16, 16/1, 16/2, 16/3 respectively. Post mortem of the three deceased was conducted in P.M.C.H., Patna on 29.12.2002 by Dr. Ashok Kumar Yadav, Associate Professor, Department of Forensic Medicine, P.M.C.H. vide Post Mortem Report Nos. 1849, 1850, 1851 all dated 29.12.2002, Exhibits 26, 26/1, 26/2 respectively. Perusal of the three Post Mortem Report(s) indicates that the same was conducted on the basis of the inquest prepared by the Magistrate. Perusal of the Post Mortem Report(s) further indicates that the three deceased were unknown criminals but later on identified through G. Ram of Shastri Nagar Police Station as Vikash Ranjan, Prashant Singh and Himanshu Kumar. While the investigation of Gardanibagh (Shastri Nagar) P.S. Case Nos. 866, 867, 868 all of 2002 continued, State Government of Bihar issued Home (Police) Department notification dated 04.01.2003, corrigendum dated 29.01.2003 granting its consent to the members of Delhi Special Police Establishment to investigate the aforesaid three cases. In the light thereof Cabinet Secretariat, Government of India, New Delhi issued notification dated 14.02.2003 (Exhibit-37) extending the powers and jurisdiction of the members of



Delhi Special Police Establishment to the whole of the State of Bihar to investigate the aforesaid three cases registered at Gardanibagh (Shastri Nagar) Police Station. In the light of the Government of India notification dated 14.02.2003 (Exhibit-37) Sri Narayanan S.S.P., C.B.I./ SIC. IV, New Delhi registered RC-5(S)/2003 dated 18.02.2003 at 20.30 hours on the basis of the written report of Mukesh Ranjan dated 29.12.2002, directed Sri N.S. Kharayat Dy. S.P., C.B.I./ SIC. IV/ New Delhi to take up its investigation. Aforesaid First Information Report of RC-5(S)/2003 was perused by the Special Judicial Magistrate, C.B.I. on 21.02.2003. After registration of the said First Information Report Sri Kharayat proceeded with its investigation, submitted charge-sheet No. 2 dated 29.03.2003 against 8 accused persons. Perusal of the charge-sheet indicates that on the date of submission of charge-sheet i.e. 29.03.2003 Accused Nos. 1, 3 were under custody. The other 6 accused persons, namely, Accused No.2, Accused Nos.4 to 8 were not under arrest on the date of submission of charge-sheet. The charge-sheet was, however, perused by the Special Magistrate, C.B.I. on 30.03.2003. In the light of the charge-sheet Special Magistrate, C.B.I. took cognizance of the offences found true during investigation under charge-sheet dated 29.03.2003. After supply of police papers to the accused persons the case was committed to the Court of Sessions. From order dated



19.06.2004, passed by Sessions Judge, Patna it appears that the records of the instant case was received in the Sessions Court after commitment of the case on 24.05.2004, the same was transferred to the court of Additional Sessions Judge-XI, Patna, who framed charge under order dated 14.12.2004 to which the 8 accused persons pleaded not guilty, claimed to be tried. The trial proceeded in the court of Additional Sessions Judge-XI, Patna wherefrom the same was transferred to the other courts, ultimately to the court of Ad hoc Additional Sessions Judge, F.T.C.-I, Patna under order dated 21.07.2012.

3. To support the charge, during trial, prosecution examined as many as 33 witnesses.

P.W. 1 Mukesh Ranjan is the informant of Gardanibagh (Shastri Nagar) P.S. Case No. 868/02, brother of the deceased Vikash Ranjan, is neither an eye-witness of the shoot-out nor any other part of the occurrence.

P.W. 2 Jagdish Prakash Gupta @ Jagdish Prasad Gupta is the father of Mukesh Ranjan (P.W. 1), the deceased Vikash Ranjan, is also not an eye-witness of the occurrence.

P.W. 3 Brahmdeo Paswan is a police officer, on the date of occurrence was Incharge of Patna District Armory. He has stated in Paragraphs 3, 17, 26 of his evidence about the arms and

not identify any of the assailants.

P.W. 22 Lakshman Singh served as Senior Manager in Allahabad Bank, is father of deceased Prashant Singh.

P.W. 23 Dr. Ashok Kumar Yadav at the relevant time served as Associate Professor, Forensic Medicine, P.M.C.H., conducted autopsy on the dead body of the three deceased. From the Post Mortem Reports (Exhibit-26, 26/1 and 26/2) and his evidence it is clear that post mortem on the dead body of the three deceased was conducted on the basis of the Inquest Report prepared by the Magistrate which is not available on record. From the evidence of P.W. 23 as also the three Post Mortem Reports (Exhibits-26, 26/1 and 26/2) it is clear that the three deceased besides suffering one pistol shot injury also suffered multiple injuries caused by hard, blunt substance.

P.W. 24 Sadai Kumar is Divisional Engineer, B.S.N.L., has issued print-out of Telephone Nos. 2589145, 2589175.

P.W. 25 Sushant Kumar Chakraborty is the draftsman in P.W.D. Building Division, Patna, has drawn the sketch map of Sammelan Market (Exhibit-30).

P.W. 26 Gulshan Mohan Ranthi is Inspector in C.B.I., served as Assistant Investigating Officer of the case.

P.W. 27 Nagendra Prasad also served as Sub



Inspector in Shastri Nagar Police Station on 28.12.2002. He reached Sammelan Market after Accused No. 1 Shamshey Alam along with Sub Inspector Gorakh Ram, Ejajul Haque, Sub Inspector R.K. Singh, saw the crowd outside the market. The witness entered the market, found in the corridor three dead bodies smeared with blood in front of S.T.D. Booth, Accused No. 1 was also present near the dead body holding two country made pistol, few cartridges. The witness also stated that Shamshey Alam informed him that he has recovered the two country made pistols and the cartridges from near the three deceased.

P.W. 28 Naresh Indaura, P.W. 29 Ranjan Kumar Jha both served as Inspector in C.B.I., assisted the Investigating Officer in the investigation of the present case.

P.W. 30 Mahesh Yadav is a businessman, on the date of occurrence was taking tea near Sammelan Market.

P.W. 31 Raj Kumar served as Dy. S.P., C.I.D. in Haryana Police, assisted the Investigating Officer of C.B.I. in the investigation of the present case.

P.W. 32 N.S. Kharayat at the relevant time served as Dy. S.P., C.B.I., conducted investigation of the present case. He having found that it was Accused No. 1 who shot the three deceased at the instance of the other accused persons, namely, Accused Nos. 2

to 8 submitted charge-sheet dated 29.03.2003 in the instant case.

P.W. 33 Ram Nath Prasad is Assistant in Law Department of the State Government, is a formal witness as he has identified the signature of Sri Vasudeo Ram, Law Secretary over the order granting sanction for the prosecution of Accused No. 1, 2 in the instant case.

4. Besides the prosecution witnesses defence has also examined 18 witnesses.

D.W.1 Umesh Prasad Sah is one of the charge-sheet witness of the prosecution. He initially deposed that two boys had come and then said that three boys had come and were quarrelling amongst themselves. On the intervention of other shopkeepers the three boys went away threatening that they are returning within one hour and shall teach the shopkeepers a lesson. After departure of the boys D.W.-1 also went to some other market, came back between 6.30-7.00 P.M. and learnt that the three boys have been killed. In his cross-examination D.W. 1 admitted that half of Sammelan Market is owned by his father and other half is owned by his brother-in-law.

D.W. 2 Ramesh Prasad Sah is also a charge-sheet witness of the prosecution and has also deposed that Sammelan Market belongs to his family. He further deposed that on the date of occurrence between 2.30-3.00 P.M. he heard noise, saw three boys

